N A A H L

NATIONAL ASSOCIATION OF AFFORDABLE HOUSING LENDERS

April 17, 2008

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 1-5
Washington, DC 20219
regs.comments@occ.treas.gov
Docket ID OCC-2007-0012

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Comments@FDIC.gov
RIN 3064-AC97

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Regs.comments@federalreserve.gov
Docket No. OP-1290

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Regs.comments@ots.treas.gov
ID OTS-2007-0030

Dear Sirs and Madams:

Our comments respond to your request at the April 4 FFIEC meeting that we provide additional information and perspective on why banks should receive fully-weighted community development (CD) loan recognition for letters of credit (LCs) in performance evaluations. To provide clarity to regulated institutions and examination staff, we recommend that LCs be included in the loan tables, thus ensuring recognition equivalent to other CD loans.

By not recognizing the importance of LCs, the Community Reinvestment Act (CRA) guidance is misaligned with the largest, most important, Federally-subsidized, affordable rental housing program in the country. By design, the Federal Low Income Housing Tax Credit (LIHTC) program includes a 4% category that frequently must utilize an LC credit enhancement structure.

LCs are increasingly critical to the building of affordable rental housing. CRA should encourage insured institutions to participate in providing such credit enhancement. A bank's willingness to credit enhance the affordable housing bonds attached to 4% tax credit developments allows local public agencies to reduce their cost of borrowing, thus increasing both availability of affordable housing and the ability to serve lower-income households through reduced rents.

LCs, however, are not currently included in the lending tables at the end of some performance evaluations, but are mentioned only in the text of the lending performance discussion, thereby receiving lesser "weight" than a loan. Additionally, the dollar value of LCs is not included in the comparison to Tier 1 capital that is referenced in the community development lending summary by at least one Agency. This has created a disincentive for banks to provide much needed LCs.

As was discussed at our meeting, there has been a dramatic reduction in available equity capital resulting from the exit of the two large GSEs from the market. Thus, it is critical that the agencies move quickly and modify the regulation to ensure sustained participation by banks.

Reasons for giving full credit for LCs include the following.

1) **The credit risk of an LC is identical to that associated with a conventional loan**.
LCs are legally binding instruments provided by financial institutions based upon requirements of issuing agencies to protect bondholders against credit risk of the underlying borrower/project. They are subject to safety and soundness exams, an indication that they are legally binding liabilities which require risk management. The risks of an LC and a loan are equivalent because an LC is funded when a project is troubled; a lender is exposed to the same principal and interest loss on such a project. In the event of a default and subsequent drawing on an LC, the institution assumes ownership of the mortgage-secured bonds in order to preserve and protect its collateral position.

2) **LC transactions are underwritten through the same methodology as conventional loans**. Due diligence for an LC is no different, with the exception of enhanced scrutiny regarding the timing of funding of bond proceeds. Further, the legal documentation has identical rights and remedies to a conventional loan.

3) **LCs require the same level of asset management and thus are monitored equally to those of conventional loans**.
When the proceeds of a bond issue enhanced by the institution's LC are used for the construction of real estate improvements, standard construction loan procedures govern the disbursement of the bond funds. The bond trustee may only disburse bond proceeds upon written authorization from the LC provider. As with a loan, such authorization is normally preceded by satisfaction of construction loan draw procedures and documentation. Performance monitoring continues throughout leasing and initial operations to track compliance with conventional stabilization benchmarks, with standard provisions to convert a construction-period LC to one enhancing the permanent term. Performance monitoring continues throughout the permanent term in a manner identical to conventional permanent loans.

In addition to the interest rate advantage, the use of tax-exempt bonds enables utilization of the "as of right" 4% LIHTC. Equity generated from the sale of tax credits does not require a cash return from the real estate. The combination of low interest rates and return-free equity helps to establish the economic feasibility of affordable rents, even in an environment of escalating housing costs. LCs are critical components of this financing structure.

If we can provide any additional information, please do not hesitate to call me.

Sincerely,

Judith A. Kennedy

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